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5 UNITED STATES DISTRICT COURT  
6 WESTERN DISTRICT OF WASHINGTON  
7 AT SEATTLE

8 JOSE FLORES-SOLORIO,

9 Petitioner,

10 v.

11 STATE OF WASHINGTON,

Respondent.

C21-51 TSZ

ORDER

12 THIS MATTER comes before the Court on the Report and Recommendation  
13 (“R&R”), docket no. 10, of the Honorable Michelle L. Peterson, United States Magistrate  
14 Judge. Having reviewed the R&R, to which no objection was filed; the petition for a writ  
15 of habeas corpus brought under 28 U.S.C. § 2254 (“Petition”), docket no. 1; the motion  
16 for vicarious exhaustion of state court remedies, docket no. 2, and the motion to compel  
17 for information (show cause), docket no. 3, brought by Petitioner Jose Flores-Solorio,  
18 who is pro se; and the remaining record, the Court enters the following Order:

19 **Discussion**

20 The R&R provides two grounds for dismissing the Petition with prejudice:  
21 (i) Petitioner failed to exhaust his state court remedies, as required under the  
22 Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”), 28 U.S.C. § 2254(b),  
23

1 and (ii) Petitioner failed to file the Petition before AEDPA's one-year statute of  
2 limitations expired.

3 The Court declines to adopt the R&R's conclusions with respect to the first  
4 ground, that Petitioner failed to exhaust his state court remedies, and therefore rejects  
5 Section III(A) of the R&R, docket no. 10 at 4–6.<sup>1</sup>

6 The Court modifies in part and adopts in part the R&R's conclusions with respect  
7 to the second ground, that the Petition is time-barred. AEDPA's one-year limitations  
8 period runs from the date on which the state court “judgment became final by the  
9 conclusion of direct review or the expiration of the time for seeking such review.” 28  
10 U.S.C. § 2244(d)(1)(A). The United States Supreme Court has held that a state court  
11 judgment does not become “final” for purposes of § 2244(d)(1)(A) until “the time for  
12 seeking certiorari review in [that] Court expire[s].” *Jimenez v. Quarterman*, 555 U.S.  
13 113, 120 (2009). When a petitioner seeks review of a state court “judgment of a lower  
14 state court that is subject to discretionary review by the state court of last resort,” as  
15 would have been the case here, the certiorari petition is due “within 90 days after entry of  
16 the order denying discretionary review.” U.S. S. Ct. R. 13(1).

17 In Petitioner's case, the Washington Supreme Court entered an order denying  
18 discretionary review of his conviction and judgment on June 29, 2016. *See State v.*

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21 <sup>1</sup> Any discussion of *Fischer v. Washington*, No. C20-51-TSZ, 2020 WL 916189 (W.D. Wash. Feb. 26,  
22 2020) is unnecessary to decide the relevant issues in this case because, for the reasons described in this  
23 Order, the R&R correctly concludes that the Petition is time-barred. *See* R&R (docket no. 10 at 8). In  
addition, *Fischer* is distinguishable from the instant matter, as the petitioner in that case exhausted his  
state court remedies by presenting his federal claims in at least one personal restraint petition filed in the  
Washington Court of Appeals in 2006. *See Fischer*, 2020 WL 916189, at \*1; *In re the Personal Restraint*  
*of Scott Allen Fischer*, No. 58499-5-I (2006). Accordingly, the Court rejects the R&R's analysis of  
*Fischer* and any related conclusions in Section III(A), docket no. 10 at 4–6.

1 *Flores-Solorio*, 185 Wn.2d 1038, 377 P.3d 740 (2016). It was not until 90 days later,  
 2 when the time for seeking certiorari review in the United States Supreme Court expired,  
 3 that Petitioner’s judgment became “final” under § 2244(d)(1)(A), which was September  
 4 27, 2016. With September 27, 2016, as the start date, AEDPA’s limitation period expired  
 5 one year later, on September 27, 2017.<sup>2</sup> *See Jimenez*, 555 U.S. at 119–20. Because  
 6 Petitioner waited until January 7, 2021, to seek federal habeas relief, his Petition is  
 7 untimely by more than three years. *See R&R* (docket no. 10 at 8).

8 Nor can Petitioner rely on § 2244(d)(2)’s tolling provision, as there is no  
 9 indication that he filed an application for state post-conviction or other collateral relief  
 10 with respect to his judgment or claim. *See* 28 U.S.C. § 2244(d)(2); *see also R&R*  
 11 (docket no. 10 at 7–8).<sup>3</sup> Absent any other grounds to excuse Petitioner’s three-year  
 12 delay, the Petition is barred pursuant to AEDPA’s one-year statute of limitations. The  
 13 Court therefore DISMISSES the Petition *with* prejudice. *See R&R* (docket no. 10 at 8).

#### 14 **Conclusion**

15 For the foregoing reasons, the Court ORDERS:

16 (1) The R&R, docket no. 10, is REJECTED in part, MODIFIED in part, and  
 17 ADOPTED in part;

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 20 <sup>2</sup> There is nothing in the Petition, or Petitioner’s motions, to suggest that there was any “impediment” to  
 21 filing the Petition, any “newly recognized” or “retroactively applicable” United States Supreme Court  
 22 precedent, or any newly discovered “factual predicate” that would have otherwise triggered the start of  
 the limitations period under §§ 2244(d)(1)(B)–(D). *See generally* Petition (docket no. 1). Accordingly,  
 the limitations period started to run when Petitioner’s judgment became “final” under § 2244(d)(1)(A).

23 <sup>3</sup> The Court independently investigated whether Petitioner sought post-conviction or collateral relief in  
 any state court and, like the Magistrate Judge, could not find any record of this—a fact Petitioner appears  
 to concede. *See* Petitioner’s Motion for Vicarious Exhaustion (docket no. 2 at 2–3).

1 (2) The Petition, docket no. 1, and this action, are DISMISSED with prejudice  
2 as time-barred;

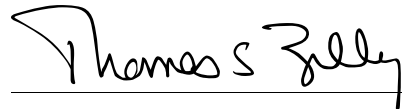
3 (3) Petitioner's motions, docket nos. 2 and 3, are DENIED as moot;

4 (4) A certificate of appealability is DENIED based on the analysis articulated  
5 in the R&R; and

6 (5) The Clerk is directed to send a copy of this Order to Petitioner and to Judge  
7 Peterson.

8 IT IS SO ORDERED.

9 Dated this 5th day of March, 2021.

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12 Thomas S. Zilly  
13 United States District Judge  
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